

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Rules and Regulations Implementing)	CG Docket No. 02-278
The Telephone Consumer Protection Act)	
Of 1991)	

REPLY COMMENTS OF NATIONAL PUBLIC RADIO, INC.

National Public Radio, Inc. (“NPR”) hereby submits its Reply Comments in the above-referenced proceeding seeking comment regarding whether to revise the FCC’s rules implementing the Telephone Consumer Protection Act of 1991 (the “TCPA”) and, in particular, whether to revisit the establishment of a national do-not-call list for telemarketers.¹

In its initial Comments, NPR argued that if the Commission decides to establish a national do-not-call list, it should exempt all telephone solicitations made *by or on behalf* of charitable organizations or public broadcasters.² The Comments filed by NPR and other charitable organizations -- together with the Federal Trade Commission’s (“FTC’s”) December 18, 2002, decision to exempt all calls made by or on behalf of charitable

¹ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Notice of Proposed Rulemaking and Memorandum Opinion and Order, CG Docket No. 02-278, CC Docket No. 92-90 (terminated), 17 FCC Rcd 17459 (2002) [hereinafter, “NPRM”].

² NPR further argued that if the Commission does not exempt solicitations by or on behalf of charitable organizations from any national do-not-list requirements then, at the very least, it should exempt all calls on behalf of public radio stations to current or former members under the “established business relationship” exemption of the TCPA. See Comments of NPR at 8-9.

organizations from its own do-not-call list requirements – demonstrate that such an exemption is essential to protect the fundraising capabilities of many of the nation’s charities, to preserve the ability of these charities to provide services to their communities and the public, and to serve the public interest.

I. Subjecting Charitable Organizations to National Do-Not-Call List Requirements Would Contradict The FCC’s Interpretation Of The TCPA And Impose Unnecessary Financial And Administrative Burdens On Charitable Organizations.

The Comments submitted in this proceeding clearly demonstrate that the FCC should exempt all telephone solicitations by or on behalf of tax-exempt charitable organizations from any national do-not-call list requirements it adopts. First, subjecting charitable organizations, and for-profit firms that solicit on their behalf, to national do-not-call list requirements would contradict the Commission’s longstanding exemption for telephone solicitations made by or on behalf of charitable organizations from the FCC rules implementing the TCPA.³ The TCPA specifically excludes calls made by a tax-exempt organization from the definition of a telephone solicitation.⁴ In implementing the TCPA, the Commission determined that calls made *on behalf of* a tax-exempt organization also should be excluded, since “the party on whose behalf a solicitation is made bears ultimate responsibility for any violations. Calls placed by an agent of the telemarketer are treated as if the telemarketer itself placed the calls.”⁵ Indeed, as noted by the March of Dimes, “[f]rom the consumer’s perspective, a call from a contract

³ See Comments of NPR at 5-6.

⁴ 47 U.S.C. § 227 (a)(3)(C).

telemarketer working on behalf of a charity is still a call from the charity.”⁶ For the same reasons, the FCC should adhere to its current interpretation of the TCPA and exempt calls by or on behalf of charitable organizations in the context of the national do-not-call registry.

Second, the Comments demonstrate that an exemption for telephone solicitations by or on behalf of charitable organizations is necessary for the financial health of many of the nation’s charitable organizations. As NPR explained in its Comments, applying national do-not-call list requirements to for-profit firms soliciting contributions on behalf of charitable organizations would restrict an important source of funding for public radio stations and, in turn, place a significant burden on the stations and their programming.⁷ Numerous national non-profit organizations, including the American Red Cross and the March of Dimes, also reported that they rely upon for-profit firms as a cost-effective approach to soliciting donations and recruiting volunteers. As a result, applying national do-not-call list requirements to these for-profit firms would have a severely detrimental impact upon the ability of charities to raise funds, collect donations, recruit volunteers, meet the nation’s blood supply needs and otherwise carry out their respective missions.⁸

Third, the Comments filed in this proceeding demonstrate that the financial and administrative burdens national do-not-call requirements would impose upon charitable

⁵ Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Memorandum Opinion and Order, CC Docket No. 92-90, 10 FCC Rcd 12391 (1995).

⁶ Comments of March of Dimes at 2.

⁷ See Comments of NPR at 2-3, 6-7.

organizations are unnecessary, since many charitable organizations already have powerful incentives and internal safeguards in place to ensure that their telephone solicitations do not alienate current, former or prospective members. NPR, the American Red Cross, the March of Dimes, and the Association of Fundraising Professionals detailed substantial safeguards taken to assure the privacy of individuals, including internal do-not-call lists, close monitoring of for-profit telemarketing firms, and protection of donor information.⁹ As the Association of Fundraising Professionals asserted, a charity “must take extra efforts to be sure it interacts with the public in an appropriate and ethical fashion. After all, the public doesn’t receive anything in return for its contributions -- the only thing a charity has to offer the public is its reputation.”¹⁰ Thus, national do-not-call list requirements would impose significant and broad financial and administrative burdens on charitable organizations, without addressing any specific harms or taking into account the incentives and safeguards already in place.

II. The Federal Trade Commission Rejected Its Proposal to Subject Telephone Solicitations Made By For-Profit Firms On Behalf Of Charitable Organizations To Its National Do-Not-Call Rules

The FCC raised the question of the exemption for telephone solicitations by or on behalf of charitable organizations when asking how any national do-not-call list established by the Commission should be coordinated with any such FTC list and various state lists. The FCC noted that the FTC had proposed to extend the national do-not-call

⁸ See Comments of American Red Cross at 2, 5; Comments of March of Dimes at 1-3; Comments of Association of Fundraising Professionals at 3-4; Comments of the Not-For-Profit and Charitable Coalition at 11-13.

⁹ See Comments of NPR at 3-4; Comments of the American Red Cross at 4; Comments of Association of Fundraising Professionals at 2.

¹⁰ Comments of Association of Fundraising Professionals at 3.

list requirements to telephone solicitations made by for-profit entities on behalf of charitable organizations. The FCC sought comment on whether its earlier interpretation of the TCPA exempting solicitations made by or on behalf of tax-exempt organizations raised possible inconsistencies with the FTC's national do-not-call list proposal and, if so, how these inconsistencies could be reconciled.¹¹

However, on December 18, 2002, the FTC expressly rejected its proposal to prohibit for-profit companies that solicit donations on behalf of charitable organizations from calling consumers and businesses that have placed themselves on the national do-not-call registry.¹² In doing so, the FTC acknowledged that non-profit organizations uniformly predicted financial disaster if it adopted its proposal. It further noted the stringent First Amendment analytical framework applicable to the regulation of any telemarketing that solicits charitable contributions. Given this background, it reasoned that its proposal to subject telephone solicitations by for-profit entities on behalf of charitable organizations to the national do-not-call list requirements was not sufficiently tailored, since it could prompt some consumers to accept the blocking of charitable solicitation calls that they would not mind receiving. The FTC also agreed with non-profit organizations that it would be too costly for these organizations to obtain express permission from each prospective donor as a means of tailoring the requirements.

¹¹ See Comments of NPR at 4-5; NPRM, 17 FCC Rcd at 17552.

¹² See Telemarketing Sales Rule, 68 Fed. Reg. 4580, 4637 (Jan. 29, 2003).

Therefore, the FTC rejected its proposal to apply its national do-not-call list requirements to for-profit firms soliciting contributions on behalf of charitable organizations.¹³

Since the FTC has exempted telephone solicitations made on behalf of charitable organizations from its national do-not-call list rules, the FCC's existing interpretation of the TCPA exemption for charitable solicitations does not raise any potential inconsistencies with the FTC rules. Accordingly, the Commission should apply this exemption to any national do-not-call rules it adopts in this proceeding.

III. Conclusion

For the reasons set forth in NPR's initial Comments and in these Reply Comments, if the FCC decides to establish national do-not-call list rules, NPR urges the Commission to exempt from any such requirements all telephone solicitations made by or on behalf of charitable organizations or public broadcasters. If the Commission does not exempt such calls, it should at least exempt all calls made to current or former members of a charitable organization or public broadcaster.

Respectfully submitted,

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¹³ See id. at 4636-4637; 16 C.F.R. § 310.4(b)(iii). However, the FTC required for-profit entities soliciting contributions on behalf of a charitable organization to maintain internal, company-specific do-not-call lists. 16 C.F.R. § 310.4(b)(iii)(A).

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